UNITED
NATIONS

CRC

Convention on the
Rights of the Child

Distr.
GENERAL

CRC/C/SR.39
12 October 1992

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

Second session

SUMMARY RECORD OF THE 39th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 October 1992, at 3 p.m.

Chairman: Mrs. BADRAN
later: Mr. KOLOSOV

CONTENTS

General discussion on children in armed conflicts (continued)

Organization of work (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meeting of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.92-17789 (E)

The meeting was called to order at 3.05 p.m.

GENERAL DISCUSSION ON CHILDREN IN ARMED CONFLICTS (agenda item 10) (continued)

1. The CHAIRMAN invited the Commission on Human Rights' Special Rapporteur on the sale of children to address the Committee.

2. Mr. MUNTARBHORN (Special Rapporteur on the sale of children, Commission on Human Rights) said that the main difference between the Committee's work and his own was a matter of scope, for the Committee's focus was on countries which had signed the Convention on the Rights of the Child, whereas his own jurisdiction under the mandate conferred on him by the United Nations covered all countries. That difference meant he could try and fill in, by investigating, examining or mobilizing support for children in difficult situations, in areas where the Committee had no remit.

3. His mandate, established in 1990, was to report on the sale of children, child prostitution and child pornography. However, he had found it impossible not to include under "Sale of children" the questions of sale for adoption purposes, for child labour, for organ transplants, and also other issues which encompassed the recruitment of child soldiers. In linking up with the Committee, he therefore found the question was whether his mandate should be extended or kept as it was, or whether it was already overstretched. In his opinion, it seemed appropriate for the question of child soldiers to include other categories of children in situations of armed conflict.

4. Since the only help he received in his task was from a coordinator in Geneva, since his mandate covered the entire globe, and since the work already took him several months a year in addition to his work as a university lecturer, there was a limit to how much more he could take on. As it was, most of the information on which his work was based was collected by various sources and sent to him. The question of child soldiers had been added only recently and little active work had been possible. However, he had managed to cooperate with NGOs and incorporate their material into his most recent report (E/CN.4/1992/55). The Committee should therefore adopt a realistic attitude in weighing up how it would like to see his mandate operate, particularly in relation to children in armed conflicts, and how that mandate could be extended to cover a whole range of other related issues and subissues.

5. As to methodology, a number of main areas of activity had first been identified: obtaining information from credible sources, both governmental and non-governmental; preparing a questionnaire which had been sent to all Governments, NGOs and other concerned entities and individuals - the replies had been covered in his report - and making field visits. Two had already been made, to the Netherlands and to Brazil, and the Government had responded well in each instance. A further two visits were scheduled later in the month, one to a developed country and the other to a developing country, in view of the need for visits to be well balanced geographically and from a developmental point of view. Indeed, field visits had proved particularly useful in that they enabled a country to be regarded as a particular case-study and a number of issues and

even misconceptions about the United Nations to be clarified. It was particularly important, furthermore, to be physically accessible at the local level, particularly to the children themselves. The last aspect of his methodology was intervention on behalf of children. In that connection, the Committee might reflect on the sorts of urgent interventions it might be able to initiate, bearing in mind that a certain amount of adaptation would be necessary. Moreover, particularly where the sale of children was concerned, it was essential for any urgent action to reach out beyond Governments to the "private sector", meaning brothels, adoption agencies and other potential or natural exploiters of children.

6. It had become apparent in his experience over the past year that, although urgent action had been started on a case-by-case basis when children could be identified by name, in cases where it was simply known that the situation was serious and the Government was doing nothing about it, other ways of taking action had had to be devised. He had therefore tried to intervene on behalf of the groups of children involved and was now awaiting a response from the Governments concerned. The Committee should consider whether it intended to intercede on a case-by-case basis or whether it might extend its work to cover group situations as well.

7. As to matters of substance he had endeavoured to discuss in national and international circles, he had addressed the question of child soldiers in the light of international humanitarian law policies and practices, a topic that was analysed in his report. The report also contained a recommendation that the minimum age for soldiers should be 18 and mentioned a variety of strategies for prevention, protection and intervention. In view of the discussion at the previous meeting, it might be useful to exchange views on the action that might be taken in the future in that regard.

8. One element which had not been raised during that entire meeting was the question of dialogue with the military, in both the regular and irregular forces. Such dialogue should take place, if not through the Committee on the Rights of the Child, then through some other forum, otherwise the work of "selling" the rules embodied in the Covenants would be impeded without the participation of the military. Children also needed to be brought into the matter. In terms of prevention, it was often difficult to make the educational aspect relevant, particularly in countries where armed conflict had not as yet actually broken out. One approach might be to include international humanitarian law, and particularly child-related issues, in the military curriculum and to make sure that the military learned about children's rights. It was also important to ensure that the guidelines for States parties' reports should refer more substantively to Committees' expectations with regard to international humanitarian law policies. The Committee should therefore consider what legal instruments its guidelines might realistically cover. Other standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice also needed to be discussed with Governments.

9. Lastly, all existing entities, governmental, non-governmental and intergovernmental, should incorporate child-related issues into their mandates,

particularly where those mandates concerned armed conflicts. The Committee might also wish to look at the possibility of calling for specific types of research to be done, whether in fields covered by a special rapporteur or not. It should also consider its approach for the future and perhaps try to focus more closely on particular subthemes.

10. The CHAIRMAN thanked Mr. Muntarbhorn for his presentation. Before the Committee began its discussion, it might be useful if the Rapporteur were to highlight the issues discussed at the previous meeting.

11. Mrs. SANTOS PAIS (Rapporteur) said that the discussion had concentrated on the four areas of prevention, standards, protection, and recovery and rehabilitation.

12. Under prevention, the Committee had discussed education in terms of understanding, solidarity and peace, viewed as a general and ongoing concern within society. The need for an awareness of the political grounds for armed conflict had also been stressed, as had the need to educate the military and all groups in which children were involved. The questions of arms expenditure and arms sales had been raised, together with the necessity for them to be monitored. The topics of mediation and conciliation had been emphasized, and the discussion had also focused on the prevention of child abuse in armed conflict situations and the use of violence in society in general.

13. Two basic concerns had been raised in relation to preventing children from participating in armed conflicts, namely, how to prevent their recruitment and how to prevent their participation in hostilities, either directly or indirectly.

14. On the question of standards, the Committee had discussed whether they were sufficiently well known and implemented, and reference had been made to other instruments of relevance to the Convention on the Rights of the Child. Mention had been made of the need for States parties to respect the rights of all children, without any discrimination and to take appropriate measures to that end. In that connection, it had been noted that, under article 41, States parties should apply the most conducive measures, drawing on international law or national legislation, as appropriate. States parties might also issue declarations to the effect that they would apply such measures, including provisions preventing the recruitment of children under 18 as soldiers. In short, the primary tasks were the ratification and implementation of existing standards and further studies with a view to improving them.

15. On the subject of protection, a number of suggestions had been made as to the measures States parties should adopt during situations of armed conflict. They should, inter alia, provide humanitarian assistance, prohibit torture and maltreatment, prevent the recruitment of minors into the armed forces and pay special attention to the plight of refugee children. As to the recovery and rehabilitation of children involved in armed conflicts, it had been suggested that United Nations bodies and non-governmental organizations might jointly draft and implement a suitable programme. In respect of recovery and

rehabilitation strategies, reference had been made to the role to be played by the family and the community.

16. Mr. KOLOSOV, recalling his own childhood experience, stressed that all children were adversely affected by internal or international armed conflicts. He was therefore disappointed that studies had concentrated solely on children actually involved in military action. The gravity of the situation of children was amply demonstrated by the number of armed conflicts currently being waged throughout the world, as well as the statistics on children provided by the International Committee of the Red Cross, which he considered rather optimistic. An appropriate response from international organizations was required, and the Committee should not limit itself to discussion but should take action, starting by raising such issues with Governments following consideration of their reports.

17. While endorsing Mrs. Santos Pais' findings, he would request that a number of points should be borne in mind. One of the documents submitted had stated that violations of the 1949 Geneva Convention and the Additional Protocols should be regarded as a breach of contract by ratifying States. In his view, it was more a case of such violations incurring the international responsibility of those States, and he suggested that, at some stage, the scope of such international responsibility should be defined. Furthermore, the Special Rapporteur on the sale of children had referred to the role of the United Nations in monitoring the implementation of existing standards. It was a matter that should be taken up by the Committee. Also, various social facilities existed for the rehabilitation of children involved in military action. In a broad sense, the issue was covered by article 39 of the Convention and, in that regard, the World Health Organization might provide the Committee with scientifically based recommendations on the subject. As to the possibility of an optional protocol to the Convention with a view to raising the minimum age of children recruited as soldiers, the Committee should take the initiative and prepare a draft on the basis of which Governments could subsequently submit a proposal to the States parties.

18. International law seemed to be contradictory with regard to the recruitment of children as soldiers. Psychologists asserted that children found it easier to kill than did adults. However, minors were not subject to the death penalty, which was an added incentive for the armed forces to continue to recruit them. In order to remedy the problem, international law could be changed so as to ensure that the responsibility lay with those who involved children in hostilities and that their recruitment should be condemned as a crime against humanity.

19. Lastly, apart from a study on the situation of children involved in armed conflicts in general, he requested that a special study be undertaken on the situation of children living in the republics of the former USSR where hostilities were being waged, such as Nagorny Karabakh and Abkhazia. Particular attention should be paid in the study to the issue of discrimination against children belonging to ethnic minorities.

20. Mr. HAMMARBERG said that, regrettably, the human rights instruments in force failed to meet the needs of children who were victims of armed conflicts. It was essential for the Committee to decide, there and then, on what concrete steps could be taken to guarantee better protection for children in armed conflicts in the future. A working group might be set up to discuss the issue and to follow up any proposals made at the present meeting. The group might also be assigned the task of undertaking the proposed study, which should analyse gaps in humanitarian law and suggest possible solutions rather than provide yet more information and more statistics.

21. It had clearly emerged from the discussion at the previous meeting that there was a lack of agreed standards. There was a whole grey area in which, for a number of reasons, the provisions of the various human rights instruments did not apply. Such a situation warranted further discussion, at the highest level, of the possibility of drafting basic rules that would be applicable under all circumstances, even during the most critical periods of war. Care should none the less be taken to ensure that those rules did not supersede other instruments, such as the Universal Declaration of Human Rights.

22. Another problem was that certain parties violating children's rights were not subject to the provisions of international law, as they did not constitute governmental entities, such as the case of former Yugoslavia. The time had come for the international community to recognize the financial or other forms of support given to militia or terrorist groups by governments abroad, which were therefore morally responsible for the violations. Further study on that issue was therefore necessary in order to establish the links between the different groups. Moreover, it was necessary to tackle the issue of the protection of humanitarian aid, which had been raised by UNICEF on several occasions. Sabotage by opposing parties of the aid provided by humanitarian organizations was becoming increasingly common. An appropriate mechanism to remedy the situation had to be found, possibly in connection with the humanitarian standards agreed on by State parties.

23. Admittedly, the provisions of the human rights instruments were not consistent about the minimum age for young persons recruited in armed conflicts. The overall aim should be to raise the age to 18. One way that could be done would be to request Governments to justify their recruitment of soldiers below that age. Unilateral declarations by Governments regarding observance of the age requirement would also be useful. Further reflection on the issue was essential, not least because the majority of children recruited were between 15 and 18 years old. If the minimum age was raised and respected the rule was observed, in quantitive terms, at least, the problem would be partly resolved. Lastly, he expressed his appreciation of the detailed and timely statement issued recently by UNICEF and UNHCR on the transport of children from war zones in former Yugoslavia. It was an excellent example of how they could use their authority to disseminate information, and he hoped other United Nations bodies would do likewise in future.

24. Miss MASON asked the Special Rapporteur on the sale of children whether he considered it necessary for the Committee to appoint its own special rapporteur,

either to ease his workload or to enable the Committee to perform its functions properly. She also asked the representative of UNESCO whether UNESCO's mandate would allow for the development or expansion of existing programmes, in cooperation with other international organizations and with non-governmental organizations, in order to meet the needs of children in armed conflicts.

25. Mrs. BELAMBAOGO, referring to comments made at the previous meeting on article 38 of the Convention, said it was clear that the general expectation was that eventually the active involvement of minors in armed conflicts should be prohibited. One way in which the Committee could encourage States parties to move closer to that goal would be to congratulate the States parties which had issued unilateral declarations to that effect. She endorsed Mr. Hammarberg's proposal for the establishment of a working group to follow up all the suggestions made so far, including the possible drafting of an optional proposal and adoption of a general comment.

26. Mrs. EUFEMIO, referring to comments made by the representative of the World Health Organization, wondered whether the dynamics of socialization in early childhood and adolescence might be a subject the Special Rapporteur on the sale of children could deal with in connection with article 29 of the Convention.

27. Mr. GOMES DA COSTA said he endorsed members' comments on the need for urgent action to improve the situation of children involved in armed conflicts, for instance in former Yugoslavia. He welcomed the initiatives taken by non-governmental and intergovernmental organizations in the area. However, strong moral and political pressure would have to be brought to bear at the highest levels in order to foster a new approach to the situation. There was substantial consensus on the issues under discussion as well as a moral and political readiness to take appropriate action, and he therefore sugggested that a suitable permanent international forum might be set up, composed of members of the Committee and representatives from non-governmental as well as intergovernmental organizations.

28. Mgr. BAMBAREN GASTELUMENDI thanked the many persons who had taken part in the present intense discussion. The decision to establish a subsidiary body would require reflection.

29. The Committee would also have to consider what could be done to help children who were victims of armed conflicts as a result of actions not by Governments but by armed groups. In Peru, for example, children were used by the Shining Path movement to detect mines or to place bombs; they were attacked on entering school, saw their teachers killed in their own classrooms or were recruited into child commando groups. Children were even hired to act as assassins. The Shining Path movement was now blackmailing society by threatening to kidnap children in order to exchange them for the release of their captured leader. The Committee must take some action at its present session.

30. As had been rightly pointed out, children could not be punished because of their age, but ways must be found of punishing the adults responsible for recruiting them into armed groups. Education was extremely important. It was not enough for the weapons to be silenced, since the hatred continued. Thanks were due to the representative of WHO for having pointed out the psychological effects of armed conflicts on children, an extremely difficult aspect which was often overlooked.

31. Mr. MOMBESHORA said that it would be impossible to take into account the views of children, as required by many articles of the Convention, when they were the victims of armed conflict: it was for the international community to find the appropriate solution. In view of the financial resources poured into conflicts, the Committee should concentrate on prevention rather than alleviation. Many international instruments signed by Governments were not enforced and little could be done to stop countries channelling weapons into a conflict.

32. Following the end of the cold war, new civil conflicts had arisen which were considered as internal matters in which intervention by the United Nations was not possible. That policy should be changed. Despite the efforts of international organizations such as the International Committee of the Red Cross, the resources intended for victims of conflicts often never arrived because Governments that were States parties to international instruments used relief as a tool to subdue their people. It was essential to find ways of enforcing international conventions in order to alleviate the plight of children. He suggested that, in her meeting with other chairmen of treaty-monitoring bodies, the Chairman should raise the question of enforceability.

33. Mr. Kolosov took the Chair.

34. Mr. BENNETT (United Nations Educational, Scientific and Cultural Organization) said he wished to elucidate UNESCO's views on the Convention on the Rights of the Child. UNESCO did not merely issue publications - it also worked actively in the field. For instance, a UNESCO mission had gone to Dubrovnik to try and persuade the parties involved in the war in former Yugoslavia to stop shelling the city. Yet, UNESCO's proper role was not to intervene in situations of conflict. His organization was convinced that education was vital in persuading people that war did not solve problems. In times of conflict, educational systems broke down and only after the conflict ended and the spotlight of the media was no longer on the countries concerned could UNESCO begin its task of rehabilitating the educational system, with particular emphasis on children with special needs, of whom there were no many after a war.

35. In UNESCO's view, the socialization of children, particularly in their early years, was extremely important, and it was significant that the Scandinavian countries, which laid great stress on that point, had always loyally supported United Nations activities.

36. Mr. MUNTARBHORN (Special Rapporteur on the sale of children, Commission on Human Rights) said that the question of whether another special rapporteur was needed should be viewed in the context of the Committee's functions, the first of which would be the consideration of country reports. Any supplementary reporting could be done from a variety of sources, as provided for in the Convention. The second function, intervention, could perhaps be tackled by establishing a mechanism to communicate with Governments, although he wondered whether that would in fact enable the Committee to solve the problem of humanitarian access. The Committee's third function would be field visits, which could be carried out by working groups assigned to different areas.

37. As to whether his mandate should be extended or another special rapporteur appointed, he believed that, despite his relatively full schedule, he could be of assistance to the Committee, in particular with respect to those States that had entered reservations to the Convention and did not divulge information in connection with those reservations, as well as with respect to States that had not acceded to the Convention. If his mandate was extended he would do his best to act accordingly. In view of the limited resources of the United Nations, it might be difficult to have a new special rapporteur appointed. There were, however, other ways of supporting the work of the Committee, for instance by establishing working groups to collect information or by securing assistance from intergovernmental and non-governmental organizations.

38. Ms. TORTORICI (International Catholic Child Bureau) said that the great challenge facing forums such as the present one was to make the tremendous leap from what had been agreed to on paper to what actually happened to children and families in places where children continued to perish or lived in almost unimagineable conditions. Humanitarian law and the Convention were important tools, but only if they were implemented in practice. In areas of the world where children were most in need of the protection afforded by those mechanisms, the international agreement was either not known, was disregarded with impunity, or was minimized by those in a position to most influence the status and treatment of children. At the same time, currently powerless sectors often did not have access to the information which would allow them to use the international agreements to protect their children. Consequently, the next logical step for the Committee would be to take the measures needed to bring the Convention into life in the field. It might seem to be an overwhelming task, but strength would be derived from uniting the efforts made by the persons working in offices and the persons working in the field, so that, for example, a community worker having first-hand information about military brutality would not feel so alone and helpless when facing great danger for having denounced abuses. Without the support of United Nations agencies, community workers might well feel that the Convention, if they were aware of it, was irrelevant in their lives, and if the agencies did not receive the information from workers in the field, the Convention would not have the desired impact.

39. Wars were insane and arbitrary situations, and it was all too easy to give up when faced with them. Nevertheless, it was possible to clear a space in the chaos to protect children in particular ways, as had been done successfully in some cases. The discussions on the continuing abuses of children were

important, as were those on the implementation, or lack of implementation, of the Convention. Even more important, however, would be the discussion on how to close the gap and bring the Convention into life in practical ways. For that, sustained moral pressure would be required.

40. Ms. COHN (Institut Henry-Dunant) said that she had tried to see what possibilities there were for ensuring that violations of the Convention entailed criminal responsibility on the part of the perpetrator.

41. Under article 4, States had an obligation to undertake "all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention". Article 38, paragraph 2, provided that "States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities". Since that article did not refer to the rules of applicable international humanitarian law, which included the Protocols to the Geneva Conventions, it might be possible to invoke such law in all situations, including internal strife and hostilities provoked or undertaken only by Government forces.

42. She therefore suggested that the Committee should ask States parties what they were doing to prevent direct participation by children in hostilities, for instance by offering education and employment, and suggest that they should enact legislation making it a crime to induce children under 15 to take part in armed conflicts.

43. Mr. HARDER (International Save the Children Alliance) expressed the hope that, when the Committee decided on the establishment of a working group to follow up the question of children in armed conflicts, it would give serious consideration to close cooperation with the NGO group on the Convention on the Rights of the Child. His own organization stood ready to assist the Committee in every possible way.

ORGANIZATION OF WORK (continued)

44. The CHAIRMAN suggested that the Committee's next meeting should be a closed meeting without a summary record.

45. It was so decided.

The meeting rose at 5.35 p.m.